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2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE DISTRICT OF MONTANA**
4 **GREAT FALLS DIVISION**

5 INDIGENOUS ENVIRONMENTAL
6 NETWORK, *et al.*,

7 Plaintiffs,

8 v.

9 UNITED STATES DEPARTMENT OF
10 STATE, *et al.*,

11 Defendants,
12 and

13 TRANSCANADA KEYSTONE
14 PIPELINE, *et al.*,

15 Defendant-Intervenors.

16 CV 17-29-GF-BMM

17 **STIPULATED SETTLEMENT
18 AGREEMENT ON PLAINTIFFS
19 INDIGENOUS
20 ENVIRONMENTAL NETWORK
21 ET AL.’S MOTION FOR
22 ATTORNEYS’ FEES AND COSTS**

23
24 Defendants U.S. Department of State, Secretary of State Mike Pompeo, U.S.
25 Fish and Wildlife Service, Director of the U.S. Fish and Wildlife Service Aurelia
26 Skipwith, and Secretary of the Interior David Bernhardt (collectively
27 “Defendants”) and Plaintiffs Indigenous Environmental Network and North Coast
28 Rivers Alliance (collectively, “Plaintiffs”), by and through their undersigned
29 counsel, hereby stipulate and agree as follows:

1 1. Plaintiffs have submitted a motion for attorneys' fees and costs pursuant
2 to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. *See* Plaintiffs'
3 Motion for Attorneys' Fees and Costs Under EAJA, ECF No. 265.

4 2. For purposes of settlement only and without conceding liability for
5 attorneys' fees and costs, Defendants agree to pay Plaintiffs a total of five hundred
6 and seventy-five thousand dollars (\$575,000.00) in full and complete satisfaction
7 of Plaintiffs' EAJA claim and any and all potential claims that Plaintiffs may have
8 for attorneys' fees and costs associated with this case.

9 3. Payment(s) of the settlement funds shall be accomplished by electronic
10 funds transfer into the lawyer trust account of Stephan C. Volker. Within twenty
11 (20) days of entry of an order approving this Agreement, Plaintiffs will provide
12 Defendants with the necessary account information to effectuate this payment,
13 including: the payee's bank account number, account type, bank routing, and
14 transit number and the payee's tax identification number.

15 4. Defendants agree to submit all necessary paperwork for the processing of
16 the payment described in Paragraph 2 above to the Department of the Treasury's
17 Judgment Fund Office, pursuant to 16 U.S.C. § 1540(g)(4) and to the appropriate
18 federal agency authorities within twenty (20) business days of receiving the
19 information necessary for processing the electronic funds transfer described in
20 Paragraph 2 above. Plaintiffs and Plaintiffs' counsel agree to hold the United States
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1 harmless in any litigation, further suit, or claim arising from the authorized transfer
2 of the agreed-upon settlement amount.

3 5. Plaintiffs agree that receipt of the payment described in Paragraph 2
4 operates as a waiver and release of any and all claims for attorneys' fees and costs
5 associated with this case. Plaintiffs further agrees that all claims Plaintiffs may
6 have for attorneys' fees, costs, and expenses associated with this case shall be
7 dismissed with prejudice upon entry of the proposed order approving this
8 Stipulated Settlement.

10 6. By this stipulation, Defendants do not waive any right to contest fees
11 claimed by Plaintiffs or Plaintiffs' counsel, in any future litigation, or continuation
12 of the present action. Further, this stipulation as to attorneys' fees and costs has no
13 precedential value and shall not be used as evidence in any other attorneys' fees
14 litigation against the United States.

16 7. The United States may offset the payment amount to account for any
17 delinquent debts owed by the Plaintiffs to the United States. *See* 31 U.S.C. § 3711,
18 3716; 26 U.S.C. § 6402(d); 31 C.F.R. §§ 285.5, 901.3; *Astrue v. Ratliff*, 560 U.S.
19 586 (2010).

21 8. This Settlement Agreement is the result of compromise and settlement,
22 and it is based on and limited solely to the facts involved in this case. It does not
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1 represent an admission, by any Party, to any fact, claim, or defense concerning any
2 issue in this case.

3 9. This Settlement Agreement has no precedential value and shall not be
4 used as evidence either by Plaintiffs or Defendants in any other litigation between
5 them except as necessary to enforce the terms of this Agreement.
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7 10. Nothing in this Stipulation shall be interpreted as, or shall constitute, a
8 commitment or requirement that Defendants are obligated to pay funds exceeding
9 those available, or take any action in contravention of the Anti-Deficiency Act, 31
10 U.S.C. §1341, or any other appropriations law.
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12 11. This document sets forth the entire Stipulated Settlement of the Parties
13 for the settlement of the request for attorneys' fees, costs, and expenses. All
14 previous understandings, agreements, and communications prior to the date hereof,
15 whether express or implied, oral or written, relating to the subject matter of this
16 Stipulated Settlement, are fully and completely extinguished and superseded by
17 this Stipulated Settlement. No modification of this Stipulated Settlement shall be
18 valid unless expressly consented to in writing by all the parties.
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20 12. The terms of this Stipulated Settlement shall become effective upon the
21 Court's approval of this stipulation.
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23 13. This Stipulated Agreement shall be governed by and construed under
24 federal law.
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14. The undersigned representatives of the Parties certify that they are fully authorized by the party or parties whom they represent to enter into the terms and conditions of this Stipulated Agreement and to legally bind the parties to it.

Accordingly, the Parties jointly and respectfully request entry of this stipulation via the attached proposed order.

Respectfully submitted this 30th day of January, 2020,

PRERAK SHAH
Acting Deputy Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

SETH M. BARSKY, Section Chief

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12 */s/ Stephan C. Volker* _____

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18 *Attorneys for Plaintiffs INDIGENOUS
19 ENVIRONMENTAL NETWORK and NORTH
20 COAST RIVERS ALLIANCE*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on January 30, 2020, a copy of the foregoing motion
3 was served on all counsel of record via the Court's CM/ECF system.

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5 */s/ Luther L. Hajek* _____
6 LUTHER L. HAJEK
7 U.S. Department of Justice
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